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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/823,512

04/13/2004

Kevin E. Dove

GK/57

3277

28596 7590 10/14/2008  
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EXAMINER

PICKARD, ALISON K

ART UNIT

PAPER NUMBER

3676

MAIL DATE

DELIVERY MODE

10/14/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/823,512	<b>Applicant(s)</b> DOVE, KEVIN E.	
	<b>Examiner</b> Alison K. Pickard	<b>Art Unit</b> 3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-60,64-74 and 76-82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-60,64-74 and 76-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 56-58, 64, 65, 67, 68, 71, and 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent 11051192 (JP ‘192).

JP ‘192 discloses a method of forming a gasket comprising winding a length of porous ePTFE tape (e.g. 11a or 11b) and air impermeable layer 12 to form alternate windings of the materials and joining to form a spiral wound gasket. The tape has upper and lower surfaces, which form the upper and lower sealing surfaces. The impermeable layer 12 can be provided at the inner periphery.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 7-14, 18, 19, 22, 24-35, 39, 40, 43, 45-47, 49-54, 56-60, 64-68, 71-74, 76-80, and 82 are rejected under 35 U.S.C. 103(a) as being obvious over Mills (5,964,465) in view of JP ‘192

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Mills discloses a gasket comprising upper and lower gasket sealing surfaces (e.g. 26, 34). The gasket comprises a porous expanded PTFE tape with a plane of expansion in the x-y direction (plane is parallel to sealing surfaces and leakage). The gasket can have a variety of shapes. Mills does not appear to disclose an air impermeable layer between alternate windings of the tape. JP '192 teaches a gasket that can be spirally formed with alternate layers of ePTFE and an impermeable layer. JP '192 teaches using the impermeable layer 12 to prevent fluid leakage through the tape layers, thus effecting a better seal. JP '192 teaches the method of joining the layers as required by the claims. The layer 12 can be applied to the inner perimeter. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the gasket of Mills with the impermeable layer as taught by JP '192 to improve the sealing ability of a gasket using ePTFE.

Regarding claims 8-10, 30-32, 50, 51, 59, neither Mills nor JP '192 appear to disclose the required densities. It is not considered inventive to discover the workable or optimum ranges by routine experimentation absent the showing of criticality for such ranges. See *In re Aller*, 105 USPQ 233, 235 (CCPA 1955). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to use the claimed densities.

5. Claims 15-17 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mills in view of JP '192 as applied to claims above, and further in view of Mortimer.

Mortimer teaches improving properties of an ePTFE tape by using fillers such as those required by the claims (col. 3, line 48-col. 4, line 19). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the tape of Mills by using the filler taught by Mortimer to improve the capacity, conductivity, and strength properties.

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6. Claims 20, 21, 23, 41, 42, 44, 48, 55, 69, 70, and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mills in view of JP '192 as applied to claims above, and further in view of Minor (6,485,809).

JP '192 does not appear to disclose other materials that can be used for the impermeable layer. Minor teaches a gasket having an impermeable layer between layers of ePTFE. Minor teaches art equivalent materials such as densified ePTFE (taught in JP '192), FEP, and PFA. It would have been obvious for one of ordinary skill in the art at the time the invention was made to use any of the equivalent materials taught by Minor as the impermeable layer based on suitability, availability or cost.

#### ***Response to Arguments***

7. Applicant's arguments filed 6-27-08 have been fully considered but they are not persuasive.

Applicant argues that JP '192 does not disclose that the layers 11 and 12 are wound continuously, i.e. spirally, as required by the claims. The examiner disagrees. The abstract (see second line after "solution") clearly states the layers can be wound spirally. Spiral wound layers are continuous.

Applicant argues there is no motivation to combine Mills and JP '192 and that the combination does not result in the claimed structure. The examiner disagrees. As stated above, the layers can be wound spirally. Also, using the impermeable layer improves the sealing ability of ePTFE tapes as taught by JP '192. A gasket with ePTFE tape that expands in an x-y plane is known. And, using impermeable layers spirally in an ePTFE tape gasket is known. The combination would yield expected results.

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Finally, a tape of ePTFE has upper, lower, and side surfaces whether oriented to expand in the x-y plane or the x-z plane. Depending on which way it's oriented, the "sides" can become the upper and lower surfaces or vice-versa. JP '192 discloses a gasket with the required surfaces.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alison K. Pickard whose telephone number is 571-272-7062. The examiner can normally be reached on M-F (9-5).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer Gay can be reached on 571-272-7029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alison K. Pickard/  
Primary Examiner, Art Unit 3676

AP